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13 THE TALBOTS, INC.

14 **UNITED STATES DISTRICT COURT**
15 **CENTRAL DISTRICT OF CALIFORNIA**

16 LYNETTE FLIEGELMAN, on behalf
17 of herself and all others similarly
18 situated,

19 Plaintiffs,

20 v.

21 THE TALBOTS, INC. and DOES 1
22 through 100, inclusive,

23 Defendants.

24 CASE NO.

25 **DEFENDANT THE TALBOTS,
26 INC.'S NOTICE OF REMOVAL**

27 [Originally Ventura County Superior
28 Court, Case No. 56-2017-00496659-
CU-BT-VTA]

29
30 **TO THE JUDGES OF THE UNITED STATES DISTRICT COURT FOR THE
31 CENTRAL DISTRICT OF CALIFORNIA, AND TO THE CLERK OF THAT
32 COURT:**

33 **PLEASE TAKE NOTICE** that Defendant The Talbots, Inc. ("Defendant" or
34 "Talbots") hereby removes the above-captioned action from the Superior Court of

1 the State of California, County of Ventura, to the United States District Court for the
 2 Central District of California, pursuant to 28 U.S.C. §§ 1332, 1441, 1446, and 1453.

3 **I. INTRODUCTION**

4 1. This Action is properly removed to this Court pursuant to 28 U.S.C. §
 5 1441 because this Court has jurisdiction under the Class Action Fairness Act, 28
 6 U.S.C. § 1332(d) (“CAFA”), in that this Action is a civil action in which the alleged
 7 amount in controversy exceeds the sum of \$5,000,000 exclusive of costs and
 8 interest, has more than 100 members in the proposed putative class, and is between
 9 citizens of different states.

10 **II. BACKGROUND**

11 2. On May 17, 2017, Plaintiff Lynette Fliegelman, purportedly on behalf
 12 of herself and all others similarly situated, filed a civil action in the Ventura
 13 Superior Court entitled *Lynette Fliegelman v. The Talbots, Inc.*, Case No. 56-2017-
 14 00496659-CU-BT-VTA. (See Exhibit A, which includes the summons, the
 15 complaint and all of the documents served on Talbots.)

16 3. Plaintiff served the complaint upon Talbots by personal service on May
 17 22, 2017. See Exhibit A, page 1.

18 4. The Complaint purports to bring claims under California’s Unfair
 19 Competition Law (“UCL”), Business & Professions Code§ 17200, et seq.,
 20 California’s False Advertising Law (“FAL”), Business & Professions Code § 17500,
 21 et seq.; and the Consumer Legal Remedies Act (“CLRA”), California Civil Code §
 22 1750 *et seq.* Complaint ¶ 19. Plaintiff’s Complaint arises from a purported
 23 transaction at a Talbots outlet store in Camarillo, California. *Id.* ¶ 32.

24 5. The proposed putative class consists of “[a]ll persons who, while in the
 25 State of California, during the four (4) year period preceding the filing of this
 26 Complaint through the date of final judgment in this action (the “Class Period”),
 27 purchased from Defendant one or more products at a purported discount off of the
 28 stated regular price at any one of Defendant’s Outlet stores in the State of

1 California, and who have not received a refund or credit for their purchase(s).”
 2 Complaint ¶ 48.

3 6. Nothing in this Notice of Removal should be interpreted as a
 4 concession of liability, the appropriateness of venue, the appropriateness of class
 5 treatment, Plaintiff’s class definition, or the validity of plaintiff’s claim for relief.
 6 Talbots reserves the right to supplement and amend this Notice of Removal.

7 **III. REQUIREMENTS FOR REMOVAL UNDER CAFA**

8 7. This Court has original jurisdiction over this action under the Class
 9 Action Fairness Act of 2005 (“CAFA”), codified in part at 28 U.S.C. §§ 1332 and
 10 1453. Under CAFA, a district court shall have original jurisdiction over any putative
 11 civil class action in which: (1) there are at least 100 members in all proposed
 12 plaintiff classes; (2) “the matter in controversy exceeds the sum or value of
 13 \$5,000,000, exclusive of interest and costs”; and (3) “any member of a class of
 14 plaintiffs is a citizen of a state different from any defendant.” 28 U.S.C. § 1332(d)(2,
 15 5). Because this action meets each of CAFA’s requirements, it may be removed to
 16 federal court. 28 U.S.C. § 1441(a) (“[A]ny civil action brought in a State Court of
 17 which the district courts of the United States have original jurisdiction, may be
 18 removed by the defendant.”).

19 **IV. THE REQUIREMENTS FOR REMOVAL UNDER CAFA ARE**
 20 **SATISFIED**

21 **A. Minimum Diversity Exists**

22 8. The minimal diversity standard of CAFA is met as long as any one
 23 defendant is a citizen of a different state than any of the named plaintiffs. 28 U.S.C.
 24 § 1332(d)(2)(A). Plaintiff is a citizen of California. Complaint ¶ 24.

25 9. For purposes of diversity, a corporation is deemed to be a citizen of (1)
 26 the state under whose laws it is organized; and (2) the state of its “principal place of
 27 business.” 28 U.S.C. § 1332(c)(1). Talbots is a Delaware corporation with its

1 principal executive offices in Massachusetts. Complaint ¶ 25. Thus, Talbots is a
 2 citizen of Delaware and Massachusetts, and no other state.

3 10. Thus, minimal diversity is satisfied because Plaintiff is a citizen of a
 4 state (California) different from Talbots (Delaware and Massachusetts).

5 11. Pursuant to 28 U.S.C. § 1441(a), the residence of fictitious and
 6 unknown defendants should be disregarded for purposes of establishing removal
 7 jurisdiction under 28 U.S.C. § 1332. *Fristoe v. Reynolds Metals Co.*, 615 F. 2d
 8 1209, 1213 (9th Cir. 1980) (“[U]known defendants sued as “Does” need not be
 9 joined in a removal petition.”). Thus, the existence of Doe defendants here does not
 10 deprive this Court of jurisdiction.

11 **B. The Number of Proposed Class Members Exceeds 100**

12 12. The Complaint alleges that members of the putative class are “so
 13 numerous that joinder of all members is impracticable,” and “estimates that the
 14 Class consists of thousands of members.” Complaint ¶ 50.

15 13. According to Plaintiff’s Complaint, the putative class is of “[a]ll
 16 persons who, while in the State of California, during the four (4) year period
 17 preceding the filing of this Complaint through the date of final judgment in this
 18 action (the “Class Period”), purchased from Defendant one or more products at a
 19 purported discount off of the stated regular price at any one of Defendant’s Outlet
 20 stores in the State of California, and who have not received a refund or credit for
 21 their purchase(s).” Complaint ¶ 48.

22 14. The Complaint clearly pleads that more than 100 individuals from the
 23 State of California purchased merchandise at a discount from a Talbots outlet store
 24 in California during the putative class period. The size of the putative class thus well
 25 exceeds 100 members.

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1 **C. The Amount in Controversy Exceeds \$5 Million**

2 15. Without conceding liability, appropriateness of class treatment,
 3 Plaintiff's class definition, or the validity of plaintiff's claims for relief, the amount
 4 in controversy in this action (including attorney's fees) greatly exceeds \$5,000,000.

5 16. Talbots denies Plaintiff's substantive allegations, denies that Plaintiff is
 6 entitled to any of the relief sought in her Complaint, and does not waive any defense
 7 with respect to any of Plaintiff's claims. Nonetheless, the amount in controversy is
 8 determined by accepting Plaintiff's allegations as true. See *Cain v. Hartford Life &*
 9 *Accident Ins. Co.*, 890 F. Supp. 2d 1246, 1249 (C.D. Cal. 2012) ("In measuring the
 10 amount in controversy, a court must assume that the allegations of the complaint are
 11 true and assume that a jury will return a verdict for the plaintiff on all claims made
 12 in the complaint.").

13 17. Case law is clear that "the amount-in-controversy allegation of a
 14 defendant seeking federal-court adjudication should be accepted when not contested
 15 by the plaintiff or questioned by the court." *Dart Cherokee Basin Operating Co.,*
 16 *LLC v. Owens*, 135 S. Ct. 547, 549-50, (2014) (citations omitted); *see also*
 17 Schwarzer, Tashima, et al., California Practice Guide: Federal Civil Procedure
 18 Before Trial (2016) § 2:2395, at 2D-30 ("[D]efendant may simply allege in its
 19 notice of removal that the jurisdictional threshold has been met and discovery may
 20 be taken with regard to that question."); *id.* § 2:3435, at 2D-172 – 173 ("Defendant's
 21 notice of removal 'need include only a plausible allegation that the amount in
 22 controversy exceeds the jurisdictional threshold.'"). Further, CAFA's legislative
 23 history indicates that even if the Court "is uncertain about whether all matters in
 24 controversy in a purported class action do not in the aggregate exceed the sum or
 25 value of \$5,000,000, the court should err in favor of exercising jurisdiction over the
 26 case." Senate Report on the Class Action Fairness Act of 2005 Dates of
 27 Consideration and Passage, S. Rep. 109-14;

1 18. Plaintiff seeks “restitution and disgorgement of all profits” associated
 2 with allegedly unfair pricing practices by Talbots during the last four years.
 3 Complaint, Prayer for Relief ¶ 2. Talbots has six outlet stores in California. Given
 4 the volume of sales in each store and the number of potential class members who
 5 made purchases at those outlet stores, the amount in controversy well exceeds
 6 \$5,000,000.

7 19. Additionally, the Complaint states that Plaintiff will move to amend her
 8 Complaint to pursue claims for actual and punitive damages under the CLRA
 9 (Complaint ¶ 101), which are properly included in the calculation for determining
 10 the amount in controversy.

11 20. Plaintiff also seeks an award of attorney’s fees. Prayer for Relief ¶ 5.
 12 This amount should also be included in connection with the amount in controversy.
 13 See *Guglielmino v. McKee Foods Corp.*, 506 F.3d 696, 700 (9th Cir. 2007).
 14 Although Defendant denies Plaintiff’s claim for attorneys’ fees, for purposes of
 15 removal, the Ninth Circuit uses a benchmark rate of twenty-five percent of the
 16 potential damages as the amount of attorneys’ fees. *In re Quintus Sec. Litig.*, 148 F.
 17 Supp. 2d 967, 973 (N.D. Cal. 2001) (benchmark for attorneys’ fees is 25% of the
 18 common fund). Assuming the amount in controversy is \$5,000,000, an award of
 19 25% attorneys’ fees based upon such amount would be an additional \$1,250,000.

20 21. Plaintiff also seeks injunctive relief, including a request for an order
 21 directing Talbots to engage in a corrective advertising campaign. Prayer for Relief ¶
 22 4. The potential cost of compliance with a request for injunctive relief may be
 23 considered when calculating the amount put in controversy under CAFA. *Tompkins*
 24 *v. Basic Research LLC*, No. 5-08-244, 2008 WL 71808316, at *4 & n9 (E.D. Cal.
 25 Apr. 12, 2008) (noting that under CAFA, the amount put in controversy includes
 26 defendants’ potential cost of compliance with a request for injunctive relief); see
 27 also James Wm. Moore et al., *Moore’s Federal Practice’s* 102.26(c)(iii) (3d ed.
 28 2010) (“The amount in controversy in CAFA cases may be determined on the basis

1 of the aggregate value to either the plaintiff class members or to the defendants").
 2 The costs to comply with an injunction could potentially be significant and
 3 Plaintiff's request for injunctive relief further takes the amount in controversy over
 4 the statutory threshold. See 28 U.S.C. § 1332(d)(2).

5 22. While Plaintiff's claim for restitution, in itself, puts the amount in
 6 controversy above \$5,000,000, the actual and punitive damages; attorney's fees; and
 7 injunctive relief requested by Plaintiff make clear that this requirement is satisfied.

8 **D. No CAFA Exceptions Apply**

9 23. The action does not fall within any of exclusion to removal jurisdiction
 10 recognized by 28 U.S.C. § 1332(d), and plaintiff has the burden of proving
 11 otherwise. *See Serrano v. 180 Connect, Inc.*, 478 F.3d 1018, 1021 (9th Cir. 2007)
 12 ("[T]he party seeking remand bears the burden to prove an exception to CAFA's
 13 jurisdiction.").

14 **V. THE OTHER PROCEDURAL REQUISITES FOR REMOVAL ARE**
 15 **SATISFIED**

16 24. Removal to this judicial district and division is proper under 28 U.S.C.
 17 §§ 1441(a), 1446(a), because the Superior Court of the State of California for the
 18 County Ventura is located within the Central District of California.

19 25. This Notice of Removal is timely because it was filed within thirty days
 20 of May 22, 2017, the date on which Talbots was served with the Summons and
 21 Complaint. 28 U.S.C. § 1446(b); *see also Murphy Bros., Inc. v. Michetti Pipe*
22 Stringing, Inc., 526 U.S. 344, 353-56 (1999) (thirty-day removal period begins when
 23 defendant is formally served).

24 26. Pursuant to 28 U.S.C. § 1446(a), a copy of the Summons, Complaint,
 25 and all other documents served on Talbots are attached as Exhibit A.

26 27. Pursuant to 28 U.S.C. § 1446(d), a copy of this Notice of Removal and
 27 all documents in support thereof and concurrently therewith are being filed with the
 28

1 Clerk of the Superior Court for the County of Ventura. Written notice of the filing
2 of this Notice of Removal is being served upon counsel for Plaintiff.

3 **VI. CONCLUSION**

4 Talbots respectfully submits that this action is removed properly pursuant to
5 the Class Action Fairness Act.

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7 DATED: June 21, 2017 SEDGWICK LLP

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9
10 By: /s/ Stephanie Sheridan
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15 THE TALBOTS, INC.

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